

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 21, 2003**

CALL TO ORDER

The 1902nd meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:10 p.m. in the City Hall Council Chambers. The following Councilors were present:

Deborah Barnes
Larry Lancaster

Susan Stone

Staff present:

Mike Swanson,
City Manager

Paul Shirey,
Engineering Director

Gary Firestone,
City Attorney

Jay Ostlund,
Associate Engineer

Alice Rouyer,
Community Development/
Public Works Director

Steve Campbell,
Code Compliance Coordinator

John Gessner,
Planning Director

Jeff King,
Project Manager
Ken Kent,
Associate Planner

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

It was moved by Mayor Bernard and seconded by Councilor Barnes to consider Other Business item D – Transportation Enhancement Grant Application Support Resolution in the Consent Agenda. Motion passed unanimously among the members present.

It was moved by Mayor Bernard and seconded by Councilor Barnes to adopt the Consent Agenda that included:

1. City Council Minutes of January 6 & 7, 2003;
2. 40th Avenue and 43rd Avenue Stormline Project Bid Award;
3. Intergovernmental Agreement (IGA) with Oregon Department of Transportation for the 42nd Avenue Improvements Project; and
4. Resolution 4-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Supporting the Request for Transportation Enhancement Funds for Main St. Downtown Improvements.

Councilor Lancaster referred to the IGA with the Oregon Department of Transportation (ODOT). He understands this is a reimbursement process and wants to ensure the state guarantees these funds in light of its current budget crisis.

Shirey said, as the City incurs expenses for the project design and construction, ODOT agrees to make incremental reimbursements.

Councilor Stone referred to the stormline project bid award request. She noticed the bid amounts varied up to \$150,000 and wanted to ensure awarding the contact to the lowest bidder is in the City's best interest.

Shirey said, in order to protect the City, staff did a complete reference check on the contractor to ensure there are no claims. Staff received excellent reports on this firm.

The motion to adopt the Consent Agenda passed unanimously among the members present.

AUDIENCE PARTICIPATION

Ed Zumwalt, 10888 SE 29th Avenue, Milwaukie. In planning for the Centennial Event, it is becoming increasingly clear that crossing McLoughlin Boulevard to access Milwaukie's riverfront is a serious problem. This issue must be addressed, and 1 possible solution is using the Kellogg Lake culvert, which is dry during the summer. He urged the Council to use its influence with Metro to find some Greenspaces money to fund a project that helps people access the riverfront.

Sherri Campbell, 3803 SE Filbert Street, Milwaukie, invited the City Council to attend the Ardenwald-Johnson Creek Neighborhood Association's annual Pajama Night on January 23 at Ardenwald School. Balfour Street residents attended the recent Ardenwald Neighborhood Association meeting and expressed their opinions of Emmert International's proposed relocation of the Sam Marinos house to A Street. Campbell noted the Association supports these residents' comments.

PUBLIC HEARING

Appeal of Planning Commission Denial of a Three-Lot Minor Land Partition with Two Flag Lots, File No. MLP-02-07

Mayor Bernard announced the applicant Phillip Reich had requested the hearing be continued to the City Council meeting on February 18, 2003. Mr. Reich signed a waiver of the 120 processing requirements.

Protest of Notice to Abate Nuisance on Property Located at 21st Avenue and Lake Road

Campbell presented the staff report. Council acknowledged the protest filed by Emmert International at its January 7, 2003 meeting. At that session, the Council heard facts and information and voted to continue the hearing to January 21, 2003. Council directed Emmert International to develop a project schedule with milestones and a date certain for removal of the house. Staff was directed to work with Emmert International to review the project schedule to ensure it adheres to Council expectations and City

regulations. Staff requested that Emmert International representatives speak to the schedule Council requested at the last meeting.

Presentation by Protestor

Emmert International representatives present: Terry Emmert, 10470 SE Hillcrest Drive, Portland; Katie Daniel, 9900 SE Lawnfield, Clackamas; and Greg Arquit 1000 SE 15th Avenue, Portland.

Arquit compiled a report with a brief summary of what has taken place to date, a work in process chronology, and milestone dates as Council requested. The report also contained construction drawings, a work in process master schedule, and proposed A Street improvements.

Daniel said several years ago Emmert International considered developing the subject property. The Housing Authority of Clackamas County (HACC) and Housing and Urban Development (HUD) participated, and, although it would be a matter of time and review by various agency attorneys, there was no opposition to development of that property. HUD criteria would be the granting of the dedication and easement. Daniel discussed the feasibility of a memorandum of understanding (MOU) signed by all parties, HACC, HUD, City of Milwaukie, and Emmert International, that would allow the process to move forward. City staff indicated once the MOU is signed, Emmert International could begin the moving process before all of the HACC and HUD items are accomplished. Emmert International is prepared to submit the permit application by Friday, January 24, 2003 that is required prior to submitting the transportation permit. The foundation plan has been prepared and is part of the building permit. With cooperation of all parties, Daniel believed the house would be moved by April 27, 2003 and occupied by summer.

Arquit added HACC and HUD provided time frames in which their responses will occur, and Emmert International used a conservative approach in preparing the schedule before Council. More than likely, the process can be expedited. He saw no reason to be concerned this project would not come to fruition.

Emmert explained that he owns the subject lot on Balfour Street. He spoke with HACC several years ago about developing that site and got a positive response. He discussed issues related to PGE and the expense involved with moving structures. When the 2 buildings on Washington Street became available, Emmert International obtained only one. Recently, Emmert International was contacted by the City to move the house, and it was the intent to move the second house to the lot near 30th Avenue and Madison Street. Emmert had no idea a 1-1/2 foot variance for the proper setbacks would be required, so he decided to use the alternate lot on Balfour Street. Emmert International has also made provisions and purchased another lot that will be used as a failsafe, but it is farther away and moving costs will be greater. The company can move quickly on its building permit application because only the plot plan will be different. Emmert is confident he will be able to save the building.

Councilor Lancaster commended Emmert International on the amount of work accomplished in a short period of time. It seems to meet the Council's expectations, but he is concerned that there are no commitments in writing from Clackamas County regarding easements.

Daniel said HACC provided a letter stating it has no objections to such a dedication or easement; however, there are other agencies, which must agree before the final decision is made. This would be the purpose of the MOU.

Councilor Lancaster understands the MOU would encompass all of the issues and asked if the Balfour Street neighbor was reluctant to provide a written statement.

Daniel said the easement documents are based on surveys. She has no reason to believe the neighbor would change her mind about signing the appropriate document.

Councilor Lancaster asked if the foundation plan was complete.

Daniel responded that the foundation plan is already drawn.

Councilor Lancaster asked for clarification of the PGE deposit Emmert referred to earlier.

Emmert said the deposit has nothing to do with hooking the structure up to power. The deposit is to send one person out to look at the route and estimate the fee for the wire move. He understands Councilor Lancaster's concern, but Emmert International will do what it takes to comply with agency requirements and get the job done.

Councilor Stone understands occupancy is scheduled for the end of June in the worst-case scenario and asked the best-case scenario.

Daniel said, if the MOU is signed by the first week of February, the entire schedule could be shortened by 5 weeks.

Emmert said the home will be set up so it is pleasing to the neighborhood. A home of this caliber would be better served as an owner-occupied home rather than a rental.

Councilor Barnes is surprised, based on Van Bergen's comments at the January 7, 2003 Council meeting, that the house could be refurbished in 14 days. It sounded as if there were major problems including the heating system.

Daniel said in the report submitted at this meeting is conservative and shows a longer time period.

Emmert said typically it takes about 30 days to complete the rehabilitation process including utility connections. The chart Emmert International provided was established to allow sufficient time, although he hopes to finish sooner. Rehabilitation of a home

that is moved is not of a long duration. He said both the Marinos house and the one next door had been remodeled to add a heat pump and ductwork.

Mayor Bernard asked Emmert if he foresaw any problems with the “failsafe” lot.

Emmert said it is a separate legal lot with no houses on it.

Julie Wisner, 3325 SE Wister Street, Milwaukie. She read a letter into the record from **Linda Montgomery**, former Traffic Safety Board member. Montgomery writes of her concerns after learning the City was contemplating demolition of the Sam Marinos house. This house has been a community landmark for over 80 years, and she feels it would be a great disservice not to do everything possible to relocate the structure to another site in Milwaukie. Montgomery gave examples of decisions made over a number of years which resulted in removal or destruction of architecture that gives Milwaukie its identity. These represent an architectural loss to the community, and Montgomery urged the Council to reconsider any decision that would lead to the destruction of a well-known landmark. The Marinos house is a beautiful example of an early 20th century private home. Montgomery believes there is a responsibility to the community to keep architecturally significant buildings, and it would be a shame not to allow a reasonable amount of time to move the house. Some individuals have claimed the presence of the house has reduced property values in the vicinity; however, tax assessor’s records show a steady increase for the past 3 years. Milwaukie police have no record of crimes related to this house. The community must keep its older, finer-built homes for future residents, and she urged against making a hasty decision based on earlier misfortunes. Saving this house supports the City’s mission statement. Montgomery asked the City Council to consider the future impact that destroying homes such as this could have on the community.

Julie Wisner asked City Council to remember this is a Centennial year and to honor the community’s history. This is not a drug or a biohazard house. It is a house with a vibrant history built by a Greek immigrant for his family. Marinos was a philanthropist, and Wisner cited several examples of his generosity during the Great Depression. He was a man of great integrity who gave back to his community as well as a prominent Portland businessman. Wisner believes the City should make a commitment to preserving these structures. Emmert is the right man to move it, but he needs time. Milwaukie has lost a significant amount of architecture through demolition or relocation. Rich Peterson, the previous owner, wasted a lot of the City’s time, and she understands the frustration. Emmert International has a team of professionals that can get the job done in a reasonable timeframe. She implored the City Council to give Emmert the time needed to move this significant piece of architecture and part of Milwaukie’s heritage. She is personally committed to the community and its future and feels passionately about giving Emmert International the time it needs to accomplish the relocation.

Martin Wilkins, 3026 SE Balfour, Milwaukie and **Charles Wilkins**, 3122 SE Balfour Street, Milwaukie. Charles Wilkins, a resident since 1969, spoke as property owner of tax lots 9200 and 8800. His property is adjacent to the Emmert property on Balfour

Street. Clackamas County installed a fence about 7 years ago to reduce trespassing, and Wilkins is concerned about maintenance responsibilities if Emmert International is allowed to move forward with its proposal. As yet, Emmert has not repaired the fence from the last time he accessed his property to cut the grass and weeds.

C. Wilkins discussed the history of the 1968 warranty deed for Emmert's property, tax lot 9000, which appears not to be a legal deed because it does not carry right-of-way provisions for a minor land partition (MLP). He believes the lot should be legalized before any residential building is placed on tax lot 9000. Adjacent property owners have not received any notice from the City about the proposed siting of the Marinos house on tax lot 9000. He understands access to the subject property will be from A Street. Any street dedication should include public access to tax lots 9100 and 8800. This action would support the goal of infill development on oversized City lots.

The proposed house move was discussed at length at the January 14, 2003 meeting of the Ardenwald-Johnson Creek Neighborhood District Association. Alternative legal vacant lots were identified which people felt would be better sites for the Marinos house. He requested that the City have a representative at the next Association meeting to provide a status report. Wilkins was somewhat confused by some of the information Emmert International provided at this meeting. He provided photographs of the site.

C. Wilkins read a letter dated January 21, 2003 into the record from Roberta Ojala, 3040 SE Balfour Street, Milwaukie. She owns the adjacent property north of the subject site. She states she is opposed to the plan and would not agree to an easement for water access. She was contacted by an Emmert International spokesperson and had a tentative agreement for the easement only by phone. She said the situation was not clearly explained to her.

Councilor Barnes asked what the general consensus was of the neighbors about Emmert International's proposal.

C. Wilkins said residents were concerned because there are about 5 other legal lots in the neighborhood that have access to Balfour Street and are curious why these lots were not considered. These lots, owned by 1 person, have been abandoned for many years, and code enforcement has been called numerous times.

Councilor Barnes asked, if given an opportunity, would the neighbors support or oppose having the house moved to that site.

C. Wilkins thought they would probably be opposed.

Councilor Lancaster appreciated the amount of research on Wilkins's part. He asked if the objective was simply that he does not want to have a house on that lot or if it would be acceptable only if certain conditions were met.

C. Wilkins said Emmert should have followed the minor land partition process in effect at the time to create a legal lot. Emmert is working on an easement and waterlines, and if the paperwork is submitted to the planning department, it will become a legal lot.

Councilor Lancaster asked Wilkins if he spoke directly with Ms. Ojala.

M. Wilkins indicated he spoke with her.

Councilor Lancaster asked who was clarifying the situation for Ms. Ojala.

C. Wilkins said Ojala was invited to the neighborhood meeting but could not attend and asked him or his son to let her know what transpired.

M. Wilkins said Ojala was unaware of the stipulations of granting a water right-of-way. Someone simply asked her if they could do it but did not explain they would actually own the property.

Councilor Stone understands that if this lot is made a legal lot that Wilkins has no objection to the house being there.

C. Wilkins said it should be a legal lot according the City's land use regulations. As he said in his testimony, 1 of the considerations should be for density infill on several other lots.

George Van Bergen, 12366 SE Guilford Drive, Milwaukie. If the City Council defers or delays its decision on abating the nuisance, the house will be there for 2 more years. This house is a public nuisance and should be abated. Milwaukie is a home rule charter community, and there are certain services a city must provide. He discussed plenary power and the need to rid the community of nuisances like this house. It is an item of personal property, not real property. He came to speak to the abatement issue, not to the land use issues related to a non-conforming property. This old house sits on blocks with boarded windows. If the Council votes to continue this, it should ask for a surety bond that is not refundable if the move is not accomplished by the due date. He believes the abatement should continue because the appropriate results have not been tendered.

Patty Wisner, 3325 SE Wister Street, Milwaukie, and current member of the Milwaukie Design and Landmarks Commission, spoke as a private citizen. She provided a report of facts and documentation meant to educate Council and staff and to refute some of the misinformation given at previous meetings. Wisner read a letter into the record stating her family's support for the preservation of the 82-year old Marinos house presently owned by Emmert International. The house is a significant example of a large, Craftsman, 2-story bungalow architecture unique to Milwaukie. She asked that the Council show its commitment to the City's mission statement by protecting this house from demolition and ensure it is preserved and relocated. She is aware of the difficulties in the process and of citizen concerns about the house being stored at its

current site beyond City-approved deadlines. Milwaukie police department records show no criminal activity related to the house. On January 13, 2003, the tax assessor records showed no decline in either assessed or market values in the surrounding area. These are indications that the house's current location has not been detrimental to the immediate area. She asked the City Council and staff to allow adequate time to relocate the house to a permanent site because demolition would be a great loss to Milwaukie's architectural heritage. The relocation of this well-known, well-built home is in Milwaukie's best interest. Preservation of this significant architectural style will allow future generations the opportunity to live in vintage homes as well as fulfill the City's vision statement. Wisner's report contained a summary of the historic homes already lost in Milwaukie, tax assessor information, and history and question and answer sections specific to the Marinos house. She sees no problem with the house sitting on that site a little longer while waiting for permits and urged Council to allow a reasonable amount of time to work cooperatively with Emmert International to relocate an architectural treasure.

Councilor Stone commented Wisner's report is thorough and well done

Brent Carter, 8806 SE Regents Drive, Milwaukie, Design and Landmarks Commission Chair and Planning Commissioner addressed the City Council as a resident. At some time in the future, the only signs in the City will be "Milwaukie Junction" with arrows pointing to expressways and Tri-Met park-and-rides. The City has a heritage, and he urged preserving it. He suggested looking at the Gilman Village website to see how Issaquah, Washington, created a village by moving its historic buildings to a designated site. As a professional in the field of architecture, he spoke to the goal of preserving the City's heritage. This is Milwaukie's Centennial year and it would be a shame for the public sector to have difficulty in moving one of its sacred landmarks. As the year progresses, Carter urged this issue be resolved by considering the bigger picture. One solution might be the creation of a subdivision for these types of historical buildings. He supports the abatement but asks the Council to be patient and allow time for Emmert International to complete the job.

Catherine Brinkman, 2513 SE Lake Road, Milwaukie. For the record, she does live in a Craftsman bungalow style house that was built during the Great Depression, and she assured the Council if these houses were side by side the difference would be clear. She is in favor of preserving architecture but also wants the neighborhood to look as it should. She is tired of seeing a boarded up, ramshackle house on top of stilts. At the last meeting, the Council requested Emmert International to provide a date certain, and Emmert indicated it could have it moved by April 27. She does not believe the word "could" constitutes any sort of certainty in respect to when the house will be removed. She questions the salability of the house. She also questioned whether the property values have increased as much as they could. She disagrees with those testifying that the house being parked on the site for a year has not been a detriment. It erodes the sense of pride of other Lake Road residents, and people are uncomfortable. It is easy to champion the values of preserving architecture if one does not pass the house each day. Brinkman suggested moving the house to another temporary location if the current

plan fails. Emmert indicated he has a storage facility, and perhaps it could be moved there. Lake Road residents and businesses on 21st Avenue have contributed as much as they can be expected in terms of patience. If the storage site is not an option, then perhaps those espousing the virtues of architectural preservation would like to have the house moved next door to them. This house is an embarrassment and people are getting very tired of its sitting there.

Lisa Gunion-Rinker and **Matt Rinker**, 3012 SE Balfour Street, Milwaukie and regular attendees of Ardenwald neighborhood meetings. Although Gunion-Rinker appreciates the house's architecture, Emmert International's proposal essentially places it in someone's backyard, and no one would ever see it. There are 2-acre lots in this neighborhood that have access to Balfour and Kelvin Streets with abandoned homes on them. Placement on one of these lots would accentuate the special nature of the Marinos house. As a property owner, she is concerned this would set a precedent in the area to open up back lots, and she is opposed to that. She did not believe Ojala understood what people were asking when they talked to her about granting an easement. She stated her opposition to Emmert International's siting the house on the proposed lot on Balfour Street.

Rinker is not opposed to preserving the house but is concerned about the appropriateness of the house on that lot. He understands the Fire District would require a turnaround area. If the County does not allow the turnaround on its property, then it would have to be on the subject lot. This gives rise to a concern with setbacks. It is a beautiful house and will not be seen if it is put on that lot. He is concerned about security and possible trespassing issues from people accessing 32nd Avenue and other streets from Hillside Housing if the fence is removed.

Gunion-Rinker said there is a large Russian community in Hillside. They are wonderful people, and she has personally had no problems.

Staff Rebuttal

Mayor Bernard asked the alternatives are if the neighbor denies the easement.

Shirey said, if the neighbor refuses to grant the easement, then the line could be run to 32nd Avenue across Housing Authority property. The sewer line already goes to 32nd Avenue.

Councilor Stone asked how one accesses the property.

Gessner said 1 possible access is a hammerhead turnaround constructed in accordance with City and Fire Marshall standards at the end of A Street. A portion of the proposed turnaround is on Emmert property, but the City would require additional right-of-way from Emmert to ensure the entire turnaround is within a dedicated City right-of-way. The County Housing Authority has not reviewed this.

Councilor Stone understands the house could be seen from A Street but not from Balfour Street.

Gessner believes that was true. A Street would be extended, and Emmert would be responsible for all necessary improvements. He understands in speaking with Gary DiCenzo, Housing Authority Executive Director, that the approval process would require a survey of residents to determine the acceptability of the proposal. The next step would be consideration by the Housing Board that is comprised of a citizen member and the Clackamas County Board of Commissioners. DiCenzo was reluctant to indicate the likelihood of Housing Authority approval at this time based on what it might hear from the neighborhood. The Board might find it is not in the best interest of the residents of the housing project. It may be 1 to 2 months before a decision is reached because meetings must be scheduled.

Emmert International submitted a timeline at this meeting which staff feels is more accurate than that previously provided. Staff provided copies of an e-mail from HUD which contained sample questions the agency would expect answered prior to granting a dedication.

Gessner said staff believes there are potentially 2 fatal flaws to the project because of uncertainties. One question has to do with the legality of the lot. There are procedural remedies in the event it was created illegally through a minor land partition application. The other issue is that a house may not be placed on a lot without street frontage. Both technical problems can be overcome given the circumstances; however, these will require additional time. Emmert International will have to apply for a minor land partition and variance if it is unable to secure Housing Authority approval. This potentially adds an additional 120 days to the overall time period. Emmert International has not discussed lot legality with staff. The issue before Council at this time is establishing a factual basis for declaring the nuisance. Storage of an unoccupied building is not allowed and does not comply with the City's Zoning Ordinance.

Councilor Barnes asked the normal fee for a Zoning Ordinance violation such as this.

Campbell explained Emmert International has not been cited, but normally it can be up to \$500 per day.

Councilor Lancaster noted Gessner made reference to technical defects and asked if fixing those defects would conflict with the principles the City Council set for the Planning Commission regarding zoning.

Gessner said the criteria for granting a variance are clear. In the event Emmert International does not secure the right-of-way dedication, a variance would be required to construct or place a house on a lot without street frontage. The first criterion is that there are unusual circumstances about the property relating to its physical characteristics or some other physical condition over which the applicant has no control. The Planning Commission recently looked at a similar application in which an illegal lot

was created in 1970. A subsequent property owner sought a minor land partition and variance approval, but it did not pass the Commission's critical examination of the circumstances. The challenge in any variance application is to provide a persuasive argument that it is excusable today. The City's entertaining a minor land partition assumes a disposition that it will not go after the property owner for a violation that occurred over 30 years ago. The application would open testimony before the Planning Commission.

Councilor Stone asked Gessner his opinion on possible negative impacts for the neighbors.

Gessner said the neighbors have explained their issues well. If this were a legal lot, impacts would be ordinary. There is a general acceptance that adjacent vacant lots will be developed in accordance with the Zoning Ordinance with certain acceptable impacts.

Protestor Rebuttal

Emmert was not aware of any problems when he purchased the Balfour Street lot 35 years ago. He has been paying taxes on it, so perhaps he should apply to the taxing division for a refund. Or, he could return the lot to the County, and then the neighbors would have the housing project people closer to them. He will ensure the fence is installed. The neighbors have been kind enough to let him access the lot to take care of the grass and clear berry bushes. He spends \$400 - \$500 a year to maintain this vacant property and feels this is still a country where people have a right to use their land. Water is available by other means, and apparently there needs to be more discussion with the neighbor to change her mind. He intends to install a hi-tech waterline in a 6-inch trench, so there is little concern about having to dig it up in the future. Although he appreciates Van Bergen's comments, people should keep in mind that Emmert International has been involved for only a few months. The house would have been moved to the first lot if it had not been for the 18-inch variance that, in his opinion, is not significant if it saves a building. It is not as much the value of saving an historic structure as much as it is recycling and saving natural resources. The neighbors have no problem if Emmert purchased 1 of the vacant lots across the street, so it is certainly not an issue for them to have the house in their neighborhood. Emmert International has moved historic structures from the Sunnyside Road improvement project to other sites for restoration, and variances far in excess of 18 inches were granted. If Emmert International had known the variance was needed, it would not have made the commitment to move the house. Apparently, this will remain a piece of land without a home on it that matches neighborhood characteristics. The Balfour Street site is his preference, but he does have a standby lot. Moving the house to the Emmert International storage lot is economically out of the question. The lot on Balfour Street is almost 10,000 square feet. The hammerhead turnaround at the end of A Street is an improvement, and if adjacent property owners wished to share the cost, then they could have access to the hammerhead. Or, he can install a spike strip to ensure it is never used since no one seems to want more lots. The home is good quality, and he hopes to see it saved for its recycling and historical value. If the County turns down that site, he

will use the backup lot; in the meantime, Emmert will submit the plans for both sites since the foundation plan is the same in either instance. It is unfortunate the house will not have much visibility, but this is the available lot. He agreed with those speaking in favor of saving the house and the importance of preserving Milwaukie's history. He applauded Carter's suggestion of creating a subdivision for historic homes.

Mayor Bernard asked Emmert how he felt about a performance bond.

Emmert said performance bond are rarely required in this type of circumstance, and he would take offense at adding costs to a preservation project. He would like to see people with a "can do" attitude in this project. He does recognize the issues and difficulties with the County agency. It makes more sense to increase the tax base by moving the house instead of only collecting taxes on a vacant lot. Dogleg lots have been approved in the subject area over the past 3 – 4 years. Although he cannot speak for HUD, he believes the County Commissioners will be supportive.

Councilor Barnes noted one of HUD's questions is the appraised property value.

Daniel believes it is about \$12,300.

Councilor Stone asked the location of the backup lot.

Emmert said it is about 4 – 5 blocks north and 2 – 3 blocks west of the Balfour Street site and near the railroad tracks.

Councilor Stone asked for additional comments on the variance requirement on the first lot.

Daniel said the property line needed to be redrawn because it was currently east to west and needed to be north and south. She understood either the property line would be redrawn or the variance granted, but not both.

Emmert explained this is a corner lot, and, to him, this is a matter of changing the lot line to get full utilization of the property. The original lot would have been a better site, and the house would have fit with the existing neighborhood characteristics.

Mayor Bernard said this is an abatement issue, and the City Council needs to determine whether or not to abate on this piece of personal property. This is not a land use hearing.

Councilor Stone hopes the goal of everyone in the room is to save the structure because of its architectural significance. She understands that if agencies do not approve the proposal then 120 days will be added to the timeline. She hoped all would work together to make it happen even if it means adding more time.

Emmert agreed with Stone's comments and is willing to readdress the variance with his client.

Mayor Bernard asked if the City would be responsible for the cost of running a waterline to that property.

Firestone said not necessarily.

Swanson commented on the amount of time spent on discussing one solution when in reality it is the Council's role to determine whether or not there is in fact a nuisance. A year ago the house was on School District property, and the District was anxious to begin construction. The District planned to demolish the house, but the City got involved through a series of discussions and agreed to allow storage for a period of time. It was not anticipated the City would be itself in this position today. The City began the first abatement process some month's ago when Peterson owned the house, and now the City finds itself in that position once again with Emmert International. The Council's role is to determine whether or not, according to the municipal code, there is a nuisance. This is a fairly simple determination because the code speaks to property used in a manner inconsistent with all state, county, or city land use and zoning regulations and decisions pertaining to the property. It does not speak to the character or nature of the property. Staff has spent a great deal of time dealing with solutions, and he hopes one will be found to this issue. The Council must focus on its decision, which is the question of nuisance or not nuisance. When that decision is made, according to the code, then 10 days are given to abate. If abatement is not done in that time period, then the City can abate the nuisance, which can mean various things to various people. The real issue is whether or not the house meets the code definition of a nuisance. That is not saying it is a bad piece of property or that it does not have some architectural status. It simply means, at least in this instance, is it or is it not used in a manner inconsistent with all state, county, and or city land use and zoning regulations and decisions pertaining to the property. That is the issue. One method of abatement, if the Council determines there is a nuisance, is to find another site for the house. The issue is not where or how to move the structure, but to abate or not to abate. This merely addresses the municipal code.

Firestone followed up on the issue of discretion. The Council has a decision to make on whether or not the house is a nuisance, and under the code, this is the Council's sole decision to make. Once it is determined to be a nuisance, if that is the Council's decision, the city manager may cause it to be abated. The word "may" gives the manager and the rest of city staff acting as the city manager's designees to take action and gives authority to take action but does not necessarily require the action to be taken. The Council can give instructions to the city manager as to how his discretion is to be exercised that could involve a timeline. The decision is whether or not the property is a nuisance and is not a land use proceeding. At some time in the future a land use hearing may be required, but the only issue at this point is whether the property is a nuisance or not.

Emmert said almost 2 years ago when the issue came up with the School District, he was assured by City staff that the 2 buildings could be sited on lots he owns in the City. Emmert International did not draw plot plans and was not aware the lines of the lot went crosswise. City staff and Marinos family members contacted Emmert to find out if he could help when the Peterson plan faltered. Emmert International agreed in good faith to do something and submitted a bid to move the house. He understood he would only have to submit a foundation permit application and get his building permit. Subsequently, he had the lot surveyed and discovered there were different lot lines. He was informed he could either switch the lot lines or get the 18-inch variance but not both. He owns the lot on Balfour Street as well as a back up. Deconstructing the house would be expensive and would not save the structure. Emmert is willing to do what is reasonable in order to make the project happen. The City granted Peterson the storage permit without which Emmert would have gotten both buildings and moved them 2 years ago.

Mayor Bernard closed public testimony portion of the hearing at 8:12 p.m.

Council Deliberations

Councilor Barnes understands the land on which the house is being stored is railroad property.

Firestone said the City provided notice to the railroad, but it did not respond. The City believes Emmert International is in charge and has responsibility for the ownership of the personal property, which is the house. To that extent, Emmert can be considered a person in charge. Although nuisances are directed toward the property owner, they are also directed toward the person in charge, and that is how Emmert and Emmert International became involved.

Swanson said the first time the railroad was notified during Peterson's ownership it did respond with a letter saying this was not a case in which they had any interest. This time, the railroad did not respond.

Councilor Barnes requested a copy of the municipal code section defining nuisances. For the record, she is not interested in demolishing this property and understands the family's feelings. She is concerned that there are many who are living and working in the area who do not share the emotional attachment to this structure. They have watched it being stored on this site for 2 years. She understands other residents' concerns and those of Milwaukie High School students. She does not think the house should be stored at its current site any longer.

Councilor Lancaster looks to what is fair and reasonable. Emmert International was tasked with developing a plan with timelines and benchmarks, so the City can track its progress. Emmert has put forth a reasonable effort to comply with Council direction. He does not feel it is fair or reasonable to craft an accelerated program, and Emmert International should have the full opportunity to move the house. Much of tonight's

discussion had to do with land use, and he does not intend to second-guess the Planning Commission. He believes the April removal and June occupancy is reasonable. However, if anything goes wrong in that process, he is ready to move toward abatement.

Councilor Stone agreed with Lancaster's comment. She looks at this house and believes it is architecturally significant and believes the Council should do everything to support the moving of the house. She also supports Emmert's plan to make it an owner occupied house that would benefit the City. She perceives the house not as a nuisance but as an annoyance. It should never have come to this point, but she believes the Council must look at what is in the best interest of preserving this architecturally significant structure. She is not in favor of moving toward abatement at this time. The timelines seem reasonable, and she urged giving Emmert International sufficient time to move the house. If there is some delay in getting Housing Authority approval, she did not see a problem with another 120 days when the house is 85 years old. She does not care where the house is moved but hopes it is to a site in Milwaukie.

Mayor Bernard believes the house is a nuisance that should be abated but is willing to provide direction after it is declared a nuisance. Doing so changes the City's position. He thinks the timelines Emmert provided are reasonable but is concerned land use issues will hold up the move. He is in favor of declaring the structure a nuisance, abating the nuisance, moving the house by April 27, and requiring a \$6,000 refundable performance bond if the house is moved by that date.

Firestone said the nature of a performance bond is that it is posted and then released. The person obtaining the bond pays a certain percentage for the bonding company to issue it. The bonding company is responsible for paying if the action does not take place on time.

It was moved by Mayor Bernard and seconded by Councilor Barnes to declare the structure a nuisance, to abate, and to direct the city manager to request Emmert International provide a performance bond, and move the house by April 27, 2003.

Motion failed with the following vote: Mayor Bernard and Councilor Barnes aye; Councilor Lancaster and Councilor Stone nay.

Firestone suggested several options: make an alternate motion; close the matter because the motion did not receive a majority vote among those present; or continue the matter. If continuation were chosen, the absent Councilor would have to familiarize himself with the entire record.

It was moved by Councilor Lancaster and seconded by Councilor Stone to move forward with the original plan without a performance bond, establish an April 27, 2003 deadline as reasonable for removal of the personal property regardless of where it goes, and if that deadline is not met, the City will go forward with a performance bond or abatement.

Councilor Stone asked if the timeline would be the end of June for occupancy.

Councilor Lancaster said by the end of April the house would be moved and occupancy established by the end of June.

Councilor Barnes understands the City Council is being asked to make a decision on whether or not this is a nuisance. The Council is responsible for making its determination on the legal definition under which she feels there is not choice but to say the house is a nuisance.

Motion failed with the following vote: Councilor Lancaster and Councilor Stone aye; Mayor Bernard and Councilor Barnes nay.

Firestone said there are alternatives that the Council may wish to consider. One is to declare the nuisance but suspend effectiveness of the decision until some point in the future, for example, through April 27, 2003.

Swanson said the Council could declare the nuisance, hold implementation in abeyance until after April 27, 2003 at which time, if the house is moved, the Council could vacate that decision. If Emmert International does not perform and the City has to abate, then there is a lien against the property. He is not as concerned about the performance bond because there is an enforceable lien, and the City does have a budgetary item that would eventually be reimbursed. The effect is to get the finding on the record, hold it in abeyance, and vacate it if there is compliance with the move on or by April 27, 2003, which is the proposed deadline.

It was moved by Mayor Bernard and seconded by Councilor Barnes to declare the nuisance, hold that declaration in abeyance until after April 27, 2003, and that order be vacated if the house is moved by April 27, 2003.

Councilor Lancaster wanted to be clear the motion did not include a performance bond.

Mayor Bernard said a performance bond is not included in the motion.

Councilor Stone asked for clarification of the definition of a nuisance and the Council's obligation to declare it a nuisance.

Firestone said the Council declares a nuisance if it believes the real property is being used in violation of the municipal code including the Zoning Ordinance which does not permit the storage of a structure such as this.

Councilor Stone said the railroad has no problem with the house being stored on that particular piece of property.

Firestone said it is not a question of whether the railroad wants it there. It is a matter of permissibility under the City's Zoning Ordinance and other municipal code regulations.

Councilor Lancaster commented on the letter and the spirit of the law and Council's role in determining what is appropriate under certain circumstances. He feels this motion represents a good compromise.

The motion passed unanimously among the members present.

Councilor Stone requested a 5-minute recess, and there was consensus to do so.

OTHER BUSINESS

Elect Council President

It was moved by Mayor Bernard and seconded by Councilor Stone to elect Councilor Lancaster Council President. Motion passed unanimously among the members present.

Citizens Utility Advisory Board Annual Work Plan

Shirey introduced Citizens Utility Advisory Board (CUAB) members **Bob Hatz**, Chair, **Charles Bird**, and **Ed Miller**. **Betty Chandler** had earlier excused herself from the meeting. The Board was established to advise the Council on the manner in which rates are for City utilities. He reviewed the nine items proposed for review: transportation utility maintenance fee, street light fee, 2003 – 2008 Capital Improvement Plan, system development study and revisions, cost of service study for water services, volume-based sewer rate study, pavement management system, and Portland/Milwaukie sewer rate adjustment.

Bird asked if the Council had any observations or wished to prioritize these projects.

Mayor Bernard said Clackamas County is studying the street maintenance fee issue and is almost ready to present the results to others involved in the study including the City of Milwaukie. Many cities are concerned about street lighting costs and system development charges. He felt the list was complete and in good order.

Councilor Lancaster felt all of the items on the list are critical projects and suggested the Board work on some or all of them concurrently.

Councilor Stone had a procedural comment since Council typically meets with the appointed advisory boards during work session. Would there be a future work session to discuss the items on the list in more detail and provide direction?

Mayor Bernard said typically an appointed advisory group provides a draft program for Council comment and direction. There are many important issues on this list, and he believes it is important to move forward.

Swanson added in the recent goal setting session Council discussed meeting 2 times annually with each advisory board. In 6 to 8 months the Council could schedule a meeting with this group for a status report.

Sanitary Sewer Volume Based Billing Update

Ostlund and **Shirey** provided the staff report updating the Council on the volume based sanitary sewer billing program. The City moved from a purely fixed rate structure to the new program in 2001, which is intended to be revenue neutral. Current figures indicate excess revenue being generated on the residential side. Financial Consulting Solutions Group (FCSG) has been retained to analyze the problem and make a recommendation if necessary.

FCSG identified potential reasons for the increased revenue as well as 3 possible courses of action which includes continuing to evaluate revenue collection trends and possibly amend the July 1, 2003 rate increase; conducting an account-by-account study for possible billing system problems; or immediately adjusting the billing structure to make the system revenue neutral. Staff recommends analyzing the revenue figures in March to determine if it is a "one time" occurrence or if a correction must be made to make the program revenue neutral.

Mayor Bernard agreed with the staff recommendation to evaluate the revenue figures in March before making any changes.

Councilor Barnes asked how much the consultant is being paid.

Ostlund said this study would cost about \$1,500. This is a specialized project for which the staff does not feel it has the necessary expertise.

Councilor Lancaster agreed this may not be a typical year and advised against rushing to make changes that might prove unnecessary. He does believe the program should be revenue neutral.

Councilor Stone agreed it was appropriate to study the program further.

Downtown Design Guidelines Project Update

Kent provided a status report on the Downtown Design Guidelines Project. The purpose of the project underway with the Design and Landmarks Commission (DLC) is to ensure downtown development is consistent with and contributes to the downtown character and vision. The project consists of 3 parts: Design Guidelines; Design

Review Process Code; and Sign Code Amendments. The Planning Commission and DLC will hold a joint public hearing in February with Council consideration in April.

Advisory Board Appointments

Mayor Bernard, with the consent of Councilors, appointed Kevin McNally to the Design and Landmarks Commission.

Resolution Changing March Meeting Dates

The group discussed the March 2003 Council meeting schedule. Members agreed to cancel the first work session of March and hold the first regular session on March 10, 2003. The work session on March 17 and regular session on March 18 will be held as normally scheduled.

It was moved by Mayor Bernard and seconded by Councilor Barnes to adopt the resolution changing the March 2003 Council meeting dates. Motion passed unanimously.

RESOLUTION NO. 5-2003:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, PROVIDING PUBLIC NOTICE OF CHANGES TO ITS MARCH 2003 MEETING TIMES AND LOCATIONS.

Comments on Draft Letter from the Clackamas County Coordinating Committee to the Metro South Corridor Policy Committee

The Council reviewed and commented on a draft letter from the Clackamas County Coordinating Committee to the Metro South Corridor Policy Committee. **Mayor Bernard** said the letter states the combined light rail project should proceed as the Locally Preferred Alternative (LPA) and financed and constructed as a single corridor in 2 phases. The first phase of this single project would be I-205 and the second phase Milwaukie to Portland. Swanson included several bullet points which supported the recommendation by identifying redevelopment opportunities in Milwaukie.

Councilor Barnes asked how the ridership was calculated.

Mayor Bernard said Tri-Met and Metro project ridership. This is not about whether or not Milwaukie wants light rail. The important thing is to take the opportunity to make sure Milwaukie is not overlooked in the transportation system.

Swanson said the Policy Committee is scheduled to meet on January 30 and February 13 in addition to community meetings. Eventually, the whole LPS issue will reach the Planning Commission and the City Council. The Policy Committee will be asked to

reach a decision before the Washington, D.C. trip in March to show the delegation a decision has been reached. He made amendments to the original letter proposed by the Clackamas County Coordinating Committee with 2 thoughts in mind. One is to deal with Washington County's stance that this is in reality 2 projects. Second, it reiterates the 2 phases of the project are linked, and one is no more important than the other.

Councilor Lancaster felt it was consistent with Milwaukie's position.

Councilor Stone is opposed to the light rail alternative because voters did not approve it. She cannot support signing this letter without comments from constituents.

Community Goals

Councilor Lancaster felt the City Council needed to discuss the proposal of adding support of library services to its goals. There are other issues related to that.

Mayor Bernard said these are still in draft form and would be discussed and adopted at a future Council meeting.

Executive Session

Mayor Bernard announced the City Council would meet in executive session pursuant to ORS 192.660(1)(d) to consult with labor negotiator and (h) real property transactions.

Adjournment

It was moved by Councilor Stone and seconded by Councilor Lancaster to adjourn the meeting. Motion passed unanimously among the members present.

Mayor Bernard adjourned the meeting at 9:30 p.m.

Pat DuVal, Recorder